Government Logistics Department refused to provide information about distribution of Personal Protection Equipment between 2017 and 2019
(Related to Code on Access to Information)

Investigation Report

In April 2020, Ms A complained to this Office against the Government Logistics Department ("GLD").

The Complaint

2. According to Ms A, she made a request to GLD under the Code on Access to Information ("the Code") in February 2020 for information about the quantities of Personal Protection Equipment ("PPE") purchased from the Correctional Services Department ("CSD") and distributed to Government departments in each of the previous three years between 2017 and 2019.

3. In its written reply to Ms A within February, GLD stated that it had purchased on average 1.1 million CSD-manufactured masks (commonly known as "CSI masks") per month between 2017 and 2019, and about 130,000 CSD-manufactured gowns in 2017. Nevertheless, GLD would not disclose the quantities of PPE distributed to Government departments to avoid prejudicing the bargaining position of GLD and other Government departments in the procurement of PPE.

4. Dissatisfied with GLD's reply, Ms A said she could not understand why disclosing the quantities of PPE distributed to Government departments between 2017 and 2019 would affect GLD's procurement in 2020. She asserted that it was in the public interest to disclose such information as it could help clear rumours about public officers' making profit by selling CSI masks in the market.

Our Findings

5. Having examined the information and explanation provided by GLD, we completed the investigation in September 2020. Our findings follow.

Relevant Parts of the Code

6. Government departments are required to make available Government-held information to the public as far as practicable to enable adequate understanding of the Government and its services unless the information requested falls into the categories of information which may be withheld under Part 2 of the Code, including paragraph 2.9(a) which reads, "Information the disclosure of which would harm or prejudice negotiations, commercial or contractual activities, or the awarding of discretionary grants and ex-gratia payments by a department"; paragraph 2.9(b) which reads, "Information the disclosure of which would harm or prejudice the competitive or financial position or the property interests of the Government"; and paragraph 2.9(c) which reads, "Information the disclosure of which would harm or prejudice the proper and efficient conduct of the operations of a department".

Response from GLD

7. GLD pointed out that the information requested by Ms A involved different types of PPE, which included CSI masks, surgical masks, N95 respirators, gowns, protective clothing, face shields, caps, eye shields, shoe covers and surgical gloves. The reasons for GLD's refusal to provide information about the quantities of PPE distributed to Government departments are as follows:

(1) When Ms A made her request for information, it was shortly after the outbreak of the pandemic. Demand for masks had risen sharply in many countries around the world and the supply had become very tight. In addition to substantial increases in prices, suppliers had set many conditions, creating difficulties for GLD's procurement of masks. For example, GLD was requested to confirm its orders immediately, settle the

payment before delivery and arrange for transportation of its orders at the places of origin. Even after GLD had confirmed its orders, other buyers simply “jumped the queue” and “snatched” the masks before the deliveries were made. Some orders had to be cancelled due to the export ban on masks imposed by the countries concerned, and some transactions came to a halt because the manufacturers suddenly raised the prices. Moreover, problems arose during production had caused some deliveries of masks to delay. Hence, GLD considered that maintaining the Government’s bargaining position in procurement of PPE was of paramount importance.

(2) Compared to what the Government had previously disclosed, Ms A’s request included more specific and detailed information about masks and other PPE, which could reflect the quantities and urgency of the demand for masks and PPE of individual departments and the Government as a whole. Suppliers, if having the benefit of such important information, would likely achieve a stronger bargaining position over the Government in negotiating the prices and other terms and conditions in the procurement of masks. GLD added that on procurement, the balance of bargaining power between the buyer and seller was subject to the information disclosed by both parties. The more details disclosed the weaker the bargaining position it would be for GLD and other Government departments as the buyer.

(3) As GLD’s provision of masks was insufficient to meet the operational needs of various Government departments, the Government allowed the departments to purchase masks according to their needs between mid-February and early May 2020. Government departments were in a weaker bargaining position in procurement because their orders were of smaller quantities.

(4) On 11 March 2020, the World Health Organisation announced that the Coronavirus Disease 2019 was a pandemic, and the infection situation throughout the world deteriorated afterwards. Hence, GLD expected that it would be much more difficult for all buyers throughout the world to procure PPE.

(5) In GLD's view, disclosing to Ms A information on the distribution of PPE to Government departments would prejudice the bargaining position in procurement, making it difficult for GLD to get reasonable prices and terms and conditions and provide promptly sufficient PPE to personnel who need such equipment (including frontline staff responsible for implementing quarantine measures). That might cause significant financial loss to the Government and seriously prejudice the protection of public health, departmental operation and society in general. Hence, GLD considered that it was in the public interest to refuse to disclose further information.

8. GLD explained that as the export bans had been lifted by various countries, and local manufacturers had started their mask production, the Government's inventory of PPE had become larger. Under such circumstances, GLD wrote to Ms A again in August 2020 to provide her with information about the quantities of PPE distributed to Government departments.

Our Comments

Information about the Quantity of Masks Distributed

9. In response to our investigation, GLD indicated that disclosure of information about the quantity of PPE distributed to Government departments between 2017 and 2019 would weaken the bargaining position of GLD and Government departments in procurement of masks in the commercial sector as well as causing financial loss to the Government or prejudicing the efficient conduct

of its operation (see **para. 7(1)-(5)**). We understand GLD's concern.

10. Nevertheless, we notice that as the authority monitoring GLD, the Financial Services and the Treasury Bureau ("FSTB") openly admitted in the press release issued on 7 February 2020 that GLD had a limited stock of 12 million masks (of which 3 million were non-CSI masks) for meeting the needs of Government departments[1]. On 16 February in another press release, FSTB pointed out that the Government had kept the total demand for masks at about 8 million and GLD then had a stock of about 12 million masks. Together with the stock kept by individual departments and CSD's production, the total stock could only last for about two months[2]. In fact, the Government had already indicated in the press release issued on 26 January that CSD maintained a monthly average production of 1.1 million CSI masks[3].

11. To our understanding, it is indisputable that there was then a global shortage of masks and CSD's production could not meet the demand of Government departments for masks. Moreover, the Government had made it public that its stock of masks for various departments could only last for about two months (see **para. 10**). Given that the sellers had already grasped how many masks the buyers would need, we do not see why it would worsen the situation or further undermine the bargaining position of GLD and Government departments in sourcing masks through commercial channels if GLD was to release to Ms A information about the quantities of masks distributed to Government departments. Hence, we consider GLD to have over-worried about the consequence of information disclosure.

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1 Government's press release dated 7 February 2020 "Multi-pronged approach to procure masks worldwide: https://www.info.gov.hk/gia/general/202002/07/P2020020700754.htm

2 Government's press release dated 16 February 2020 "Government's guidelines on distributing protective gears: https://www.info.gov.hk/gia/general/202002/17/P2020021700027.htm

3 Government's press release date 26 January 2020 "Clarification regarding the Government's stock for face masks: https://www.info.gov.hk/gia/general/202001/26/P2020012600525.htm

12. Besides, a critical shortage of masks and occasional rumours about misuse of CSI masks had attracted much public concern and raised doubts. There had also been calls for the Government's explanation about the production and sale of CSI masks, rendering "masks" an issue of public interest. In our view, disclosure of information about the quantities of masks distributed to Government departments between 2017 and 2019 can help dispel doubts about the Government's "hiding" the whereabouts of CSI masks.

13. Obviously, when deciding whether the information about the quantities of masks distributed to Government departments between 2017 and 2019 should be released to Ms A, GLD had not given due consideration to all the factors (including the public interest in disclosure) (see **para. 12**).

<u>Information about the Quantity of PPE Distributed</u>

14. Unlike the information about masks, the information about the quantities of PPE distributed to Government departments, including the types of PPE and the supply, stock and consumption of PPE by GLD and Government departments, between 2017 and 2019 had never been released.

15. As GLD pointed out, the information requested by Ms A could reflect the quantities and urgency of the demand for masks and PPE of individual departments and the Government as a whole (see **para. 7(2)**). In our opinion, disclosure of such information would allow the suppliers to calculate the Government's demand for PPE, which could undermine the Government's bargaining position in negotiating the prices and terms and conditions in purchasing PPE, making adverse impact on GLD's procurement. Hence, it was justified for GLD to invoke paragraph 2.9 (a)-(c) to refuse Ms A's request for information about the quantities of PPE distributed to Government departments between 2017 and 2019.

Conclusion

16. In light of the analysis in **paragraphs 9 to 15**, The Ombudsman considers that GLD had not strictly adhered to the principles of the Code or given due consideration in handling Ms A's request for information. Therefore, this complaint is **partially substantiated**.

17. We are pleased to note that following the change in the supply situation of the equipment, GLD released to Ms A the information about the quantities of PPE distributed to Government departments (see **para. 8**).

Recommendations

18. The Ombudsman recommends that GLD learn from this case and strengthen its staff training to ensure that they will carefully consider each item of request and relevant factors in handling requests for information and strictly comply with the requirements of the Code and its Guidelines on Interpretation and Application.

Office of The Ombudsman
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